

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

LAUREN WILLIAMS-LESTER,

Plaintiff,

v.

VISION FINANCIAL CORPORATION,

Defendant.

Case No.: **2:15-cv-06662-BMS**

MOTION FOR DEFAULT JUDGMENT

Now comes Plaintiff, Lauren Williams-Lester (hereinafter "Plaintiff"), by and through counsel, pursuant to the Court's entry of default against the Defendant, and respectfully moves the Court to enter judgment against Defendant, Vision Financial Corporation (hereinafter "Defendant"). Plaintiff respectfully requests that this Court enter judgment against Defendant for \$4,595, including \$1000 in statutory damages and reasonable attorney fees and costs the Plaintiff incurred in bringing this action, as detailed in the fee bill attached as Exhibit B. Default Judgment against Defendant is appropriate since Defendant failed to Defend this action or retain an attorney, prompting the Court's entry of default against Defendant. Further reasons are outlined below.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Initially, Defendant was retained by counsel and participated in this case. On June 1, 2016, this Court issued an Order allowing Defendant's counsel to withdraw and giving Defendant sixty (60) days to retain new counsel. Defendant never retained new counsel, despite multiple opportunities to do so. Defendant has neither retained an attorney nor made any attempt to defend itself in this action.

II. FACTS

Beginning in or about 2014, and continuing into April 2015, Defendant placed repeated harassing telephone calls to Plaintiff's home and cellular telephones in order to collect an alleged credit card debt. See Docket Entry No. 1. at ¶¶13 & 15. Plaintiff received calls from Defendant 2-3 times per day. Id. at ¶16. Plaintiff received some of Defendant's calls before 8:00am and after 9:00pm. Id. at 18. Plaintiff told Defendant that she only wanted to be contacted by mail. Id. at ¶19. But the Defendant continued to call the Plaintiff. Id. at ¶21.

In addition to calling Plaintiff repeatedly and continuously, despite being told to stop in writing, Defendant also threatened and badgered Plaintiff during some of these calls. Specifically, Defendant told Plaintiff that unless she paid the alleged debts he would face "legal action." See Docket Entry No. 1 at ¶¶22-23. Yet to date the Defendant has taken no steps toward suing Plaintiff for the debt. Id. at ¶23. Finally, Defendant never sent Plaintiff written notice as required by § 1692g of the FDCPA.

These actions were abusive and violated several sections of the FDCPA and the TDCA, thereby entitling Plaintiff to damages.

III. ARGUMENT

As Defendant did not defend this action, Defendant is treated as if it had never filed an Answer and the Court may issue default judgment based on its discretion. Hritz v. Woma Corp., 732 F.2d 1178, 1180 (3rd Cir. 1984). Given Defendant's liability, Plaintiff is entitled to recover damages under the FDCPA that, without the requested judgment, Plaintiff would not be able to enforce.

A. Claims

Therefore, default judgment against Defendant is appropriate as to Plaintiff's claims under the FDCPA:

1 The Plaintiff's Complaint alleges multiple violations of the FDCPA. The FDCPA is a
 2 strict liability statute. See Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th
 3 Cir. 1997); See also Russell v. Equifax ARS, 74 F.3d 30, 33 (2nd Cir. 1996). *Only a single*
 4 *violation of the Act need be proven in order to impose liability.* Bartlett v. Heibl, 128 F.3d
 5 497, 499 (7th Cir. 1997). (emphasis added); see also Turner v. J.V.D.B. & Assoc., Inc., 330
 6 F.3d 991, 995 (7th Cir. 2003). "A consumer need not show intentional conduct by a debt
 7 collector to be entitled to damages." See Id. Once a single violation of the FDCPA is
 8 demonstrated, a plaintiff is entitled to recover total FDCPA statutory damages of \$1,000, actual
 9 damages sustained as a result of the defendant's conduct, and the costs of the action plus
 10 reasonable attorney's fees. 15 U.S.C. §1692k.

13 As plead in the Complaint, the Defendant violated the FDCPA as follows:

14 1. **§1692c(a)(1)**: This section of the FDCPA prohibits debt collectors from
 15 communicating with a consumer "at any unusual time or place or place known or which should
 16 be known to be inconvenient to the consumer." See 15 U.S.C. §1692c(a)(1). Under this section
 17 of the FDCPA, once a consumer informs a debt collector that calls at a particular time are
 18 inconvenient, the debt collector may not call at that time. Austin v. Great Lakes Collection
 19 Bureau, Inc., 834 F.Supp. 557, 559 (D. Conn. 1993) (debt collector violated FDCPA by calling
 20 consumer at work when she told them not to do so). Here, the Plaintiff was called before
 21 8:00am and after 9:00pm, which is a *per se* violation of the statute.

24 2. **§1692d**: This section of the FDCPA prohibits debt collectors generally from
 25 engaging in any conduct "the natural consequence of which is to harass, oppress or abuse any
 26 person in connection with the collection of a debt." See 15 U.S.C. §1692d. Defendant violated
 27 this section by calling Plaintiff after being told that she did not wish to receive any more calls,
 28 by calling Plaintiff repeatedly on a near-daily basis and often multiple times a day, by

1 continuing to call Plaintiff after being instructed to stop, and by threatening Plaintiff with legal
2 action and criminal charges without the intent or legal means to do so.

3 2. **§1692d(5)**: This section of the FDCPA prohibits debt collectors “[c]ausing a
4 telephone to ring or engaging any person in telephone conversation repeatedly or continuously
5 with intent to annoy, abuse, or harass any person at the called number.” See 15 U.S.C.
6 §1692d(5). While this section requires an intent to harass, unlike other sections of the FDCPA
7 which are strict liability, that intent may be implied from the nature and pattern of calls by a
8 jury or trier of fact. See e.g. Regan v. Law Offices of Edwin A. Abrahamsen & Assoc., P.C.,
9 2009 WL 4396299, *6 (E.D. Pa. Dec. 1, 2009). A high volume of calls over a short period,
10 such as calls every day or every other day, and even more so multiple calls a day, violate this
11 section as they are not only repeated and continuous but demonstrate a Defendant's intent to
12 harass. See Carr v. NCO Financial Systems, Inc., 2011 WL 6371899, at *2 (E.D. Pa. Dec. 20,
13 2011); Valentine v. Brock & Scott, PLLC, 2010 WL 1727681, at *4 (D.S.C. April 26, 2010)
14 (holding eleven (11) calls in nineteen (19) days constituted harassment); and Brown v. Hosto &
15 Buchan, PLLC, 748 F.Supp.2d 847, 852 (W.D. Tenn. 2010) (holding seventeen (17) calls in
16 one (1) month constituted harassment). The Plaintiff need not identify the dates and times of
17 calls, but need only identify the frequency, as the overall pattern of calls is what constitutes
18 harassment. Krapf v. Nationwide Credit, Inc., 2010 WL 2025323 at *2 (C.D. Cal. 2010); See
19 also Pratt v. CMRE, 2012 WL WL 86957 at *2-3 (E.D. Mich. Jan. 11, 2012). Here, Defendant
20 violated this section by calling Plaintiff multiple times a day.

21 3. **§1692e**: This section of the FDCPA prohibits debt collectors from using "any
22 false, deceptive, or misleading representation or means in connection with the collection of any
23 debt." See 15 U.S.C. §1692e. This section requires that any statements a debt collector makes
24 to a person in an attempt to collect a debt must in fact be true. Sparks v. Phillips & Cohen

1 Assocs., Ltd., 641 F.Supp.2d 1234, 1248 (6th Cir. 2008). If a debt collector makes false
2 statements in an attempt to collect a debt, this section is violated even if the Plaintiff was not
3 deceived by those statements since the FDCPA. Id. Here, the Defendant: threatened to pursue
4 legal action; a misrepresentation as Defendant made no moves to do so and thus clearly had no
5 intent to do so.
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7 4. **§1692e(5)**: This section of the FDCPA prohibits debt collectors from threatening
8 any action that cannot legally be taken or that it does not intend to take. See 15 U.S.C.
9 §1692e(5). The Defendant violated this section when it threatened to pursue legal action against
10 the Plaintiff if she did not pay, which it did not do or show that it intended to do.
11

12 5. **§1692e(10)**: This section of the FDCPA prohibits debt collectors from "[t]he use
13 of any false representation or deceptive means to collect or attempt to collect any debt." See 15
14 U.S.C. §1692e(10). As described above, Defendant violated this section by threatening legal
15 action it clearly did not intend to pursue, as none was ever taken.
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17 6. **§1692f**: Section 1692f "broadly prohibits a debt collector from using "unfair or
18 unconscionable means to collect...any debt." See Knoll v. Allied Interstate, Inc., 502 F.Supp.2d
19 943, 948 (D.Minn. 2007) (quoting 15 U.S.C. §1692f). Taken together Defendant's practices
20 outlined above violate §1692f, which prohibits the use of any "unfair or unconscionable means
21 to collect or attempt to collect any debt." See 15 U.S.C. § 1692f. This section operates both as a
22 catchall for conduct that is recognizably unfair, but not explicitly enumerated in other sections
23 of the FDCPA and as an umbrella for a pattern of misbehavior that overlaps provisions. See
24 Matsuda v. Thomas Richards & Co., 759 F.Supp. 1456 (C.D. Cal. 1991). Thus, when a debt
25 collector sent a deceptive collection letter which implied it was from an attorney as part of a
26 pattern of improper conduct, that act violated both §1692d(3) prohibiting misleading or
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1 deceptive collection methods and §1692f. Id. at 1460-1461. Here, the overall pattern of
2 Defendant's conduct shows a violation of these claims.

3 7. Under § 1692g, a debt collector must provide a written notice explaining the
4 debt and the debtor's rights, including the right to dispute. §1692g. Here, because no written
5 notice was even send, Defendant violated the FDCPA.
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7 **B. Damages**

8 The Plaintiff is therefore entitled to the damages plead in the Complaint: (1) \$1,000
9 statutory damages under the FDCPA pursuant to 15 U.S.C. §1692k; and (2) all reasonable
10 attorney's fees and costs pursuant to 15 U.S.C. §1692k(a)(2)(A). See Docket Entry No. 1. The
11 attorney's fees and costs are \$3,595.50 per the attached fee bill. See Ex. B. So Plaintiff requests
12 \$4,595.50.
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14 **III. ATTORNEY'S FEES**

15 An award of attorney fees and costs is mandatory when a plaintiff brings a successful
16 action under the FDCPA. See Zagorski v. Midwest Billing Services, Inc., 128 F. 3d 1165, 1166
17 (7th Cir. 1997). "Given the structure of [15 U.S.C. §1692k], attorney's fees should not be
18 construed as a special or discretionary remedy; rather, the Act mandates an award of attorney's
19 fees as a means of fulfilling Congress's intent that the Act should be enforced by debtors acting
20 as private attorneys general." See Graziano v. Walkeron, 950 F. 2d 107, 113 (3d. Cir. 1991)
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22 Thus, an award of attorney's fees and costs to Plaintiff is integral to the success of the policy
23 goals underlying the FDCPA.
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25 Plaintiff is therefore entitled to reasonable attorney's fees and costs. As the U.S.
26 Supreme Court has explained the calculation for an award of attorney's fees: "The most useful
27 starting point for determining the amount of a reasonable fee is the number of hours reasonably
28 expended on the litigation multiplied by a reasonable hourly rate. The calculation provides an

1 objective basis on which to make an initial estimate of the value of a lawyer's services.” See
2 Hensley v. Eckerhart, 103 S. Ct. 1933, 1939 (1983). Although this decision arises in the context
3 of the Civil Rights Attorney's Fees Award Act, 42 U.S.C. §1988, these criteria are equally
4 applicable here. “The standards set forth in this opinion are generally applicable in all cases in
5 which Congress has authorized an award of fees to a ‘prevailing party.’” See Id. at 1939, n.7.
6 “We have stated in the past that fee-shifting statutes' similar language is ‘a strong indication
7 that they are to be interpreted alike.” See Independent Federation of Flight Attendants v. Zipes,
8 109 S. Ct. 2732, 2735 n.2. (1989) (quoting Northcross v. Memphis Bd. of Education, 93 S. Ct.
9 2201, 2202 (1973)). The multiplication of the reasonable number of hours expended times the
10 reasonable hourly rate is referred to as the “lodestar.” See Friend v. Kolodzieczak, 72 F.3d
11 1386, 1389 (9th Cir. 1995).

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14 The Plaintiff's fee bill uses the lodestar method and applies a reasonable hourly rate for
15 each of the attorney's and legal support staff who worked on the case. “The attorney’s actual
16 billing rate for comparable work is ‘presumptively appropriate’ to use as the market rate.” See
17 People Who Care v. Rockford Bd. of Educ., 90 F. 3d 1307, 1310 (7th Cir. 1996) (citation
18 omitted). “Once an attorney provides evidence establishing his market rate, the opposing party
19 has the burden of demonstrating why a lower rate should be awarded.” See Id. at 1313.
20 Here, Plaintiff requests \$425.00/hr for founding and managing partner Crag Thor Kimmel,
21 \$300.00/hr for senior associates Amy L. Bennecoff Ginsburg and Tara L. Patterson, \$265.00/hr
22 for associate attorneys Richard Albanese and Ryan Fitzgerald, \$165.00/hr for paralegals
23 Christine Vargas and Melanie Panasiuk, \$115.00/hr for law clerk Zach Kimmel, \$115.00/hr for
24 legal assistant Natasha Childs. See Ex. B. Plaintiff also seeks cost as set forth in the fee bill. Id.
25 All of the time entries and costs in the fee bill were necessary and appropriate to Plaintiff
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1 Counsel's successful prosecution of this case. Accordingly, Plaintiff respectfully requests an
2 award of attorneys' fees based on the reasonable hourly rates requested.

3 **V. CONCLUSION**

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5 For all the above reasons, the Plaintiff respectfully requests that this Court grant her
6 Motion for Default Judgment against Defendant in the amount of \$4,595.50.

7 RESPECTFULLY SUBMITTED,

8 DATED: December 9, 2016

KIMMEL & SILVERMAN, P.C.

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CERTIFICATE OF SERVICE

I, AMY L. BENNECOFF GINSBURG, ESQUIRE, do certify that I served a true and correct copy of Plaintiff's Motion for Default Judgment and Memorandum of Points and Authorities, in the above-captioned matter, upon the following via mail:

Vision Financial Corp
11960 Westline Industrial Drive
Suite 330
Maryland Heights, MO 63146

Dated: December 9, 2016

By: /s/ Amy L. Bennecoff Ginsburg
Amy L. Bennecoff Ginsburg